

Response To Office Action Mailed May 7, 2003

A. Pending Claims

Claims 4167-4183 and 4321-4342 are currently pending. Claims 4167-4170, 4172, 4177, 4178, 4181, 4183, 4321-4323, 4325-4333, 4336-4342 have been amended. The claims have been amended to correct typographical errors and/or to clarify the claims.

B. Amendments to the Specification

The title of the application has been amended to correct a typographical error. The amended paragraphs have been changed to clarify the paragraphs and/or to correct typographical errors.

C. Submission of Corrected Formal Drawings

In the Office Action mailed May 7, 2003, the Examiner indicated approval of the proposed drawing corrections filed on March 12, 2002. Applicant submits 7 sheets of formal drawings (including FIGS. 23a, 23b, 32, 44, 54, 55, 59, 60, and 63).

D. The Claims Are Not Anticipated By Terry Pursuant To 35 U.S.C. § 102(b) Or, In The Alternative, The Claims Are Not Obvious Over Terry Pursuant to 35 U.S.C. § 103(a)

The Examiner rejected claims 4167-4183 and 4321-4342 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,099,567 to Terry (hereinafter "Terry"). Applicant respectfully disagrees with these rejections.

The standard for "anticipation" is one of fairly strict identity. To anticipate a claim of a patent, a single prior source must contain all the claimed essential elements. *Hybritech, Inc. v.*

Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81, 91 (Fed.Cir. 1986); *In re Donahue*, 766 F.2d 531, 226 U.S.P.Q. 619, 621 (Fed.Cir. 1985).

To reject a claim as obvious, the Examiner has the burden of establishing a *prima facie* case of obviousness. *In re Warner et al.*, 379 F.2d 1011, 154 U.S.P.Q. 173, 177-178 (C.C.P.A. 1967). To establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974); MPEP 2143.03.

The Examiner states:

The Terry reference discloses a product produced from a coal formation comprising cracked gases of pyrolysis. The product appears to be the same or similar to the product claimed in that the product of Terry is produced in a similar way as compared to the claimed product. See col. 2, lines 54-68 and col. 5, lines 38-44.

Terry states:

A pattern of wells is established for the production of coal in situ. A portion of the pattern is drilled and the wells are equipped for injection of fluids into and withdrawal of fluids from an underground coal seam. A perforating gun is lowered into each well and a projectile is fired in the direction of the desired underground linkage. The underground linkage is completed by burning an underground channel through the coal. The hot channels in the underground coal are then used to propagate in situ combustion of the coal. Combustion is sustained by continuous injection of oxygen and combustion temperatures are moderated by continuous injection of steam. The products of the underground reactions are captured at the surface. (Terry, col. 2, lines 55-68)

Applicant submits that the product of Terry does not appear to be produced in a similar way as compared to the claimed product. Terry appears to be using a fireflood and injecting steam. The description of Terry's product appears to be too limited to suggest quantitative similarities between Terry's product and the product claimed. Applicant submits that Terry does not appear to teach or suggest the features of claims 4167 and 4321 and the claims dependent

thereon. Applicant therefore respectfully requests removal of the rejections of claims 4167, 4321, and the claims dependent thereon.

E. Double Patenting

The Examiner provisionally rejected claims 4167-4183 and 4321-4342 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4369-4402 of copending Application No. 09/841,240. The Examiner provisionally rejected 4167-4183 and 4321-4342 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4429-4448 of copending Application No. 09/841,636. The Examiner provisionally rejected claims 4167-4183 and 4321-4342 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4188-4284 of copending Application No. 09/841,310.

Upon the present application being in condition for allowance but for the double patenting rejections, Applicant will provide arguments for the inappropriateness of the double patenting rejections and/or provide a terminal disclaimer for the patent and/or patent applications.

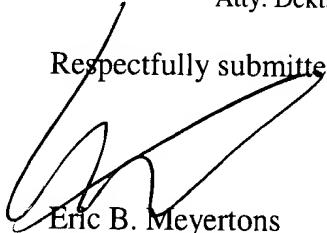
F. Additional Comments

Applicant submits that all claims are in condition for allowance. Favorable consideration is respectfully requested.

Applicant believes that no fees are due in association with the filing of this and accompanying documents. If an extension of time is required, Applicant hereby requests the appropriate extension of time. If any fees are required, please charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5659-07000/EBM.

Inventors: Wellington et al.
Appl. Ser. No.: 09/841,289
Atty. Dckt. No.: 5659-07000

Respectfully submitted,


Eric B. Meyertons
Reg. No. 34,876

Attorney for Applicant

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. Box 398
Austin, Texas 78767-0398
(512) 853-8800 (voice)
(512) 853-8801 (facsimile)

Date: 8-1-03